

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MARGARET SHANK,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION
	:	
	:	
JOANNE B. BARNHART	:	NO. 02-0306
Commissioner of Social Security	:	
	:	
Defendant.	:	

MEMORANDUM/ORDER

Green, S.J.

August ____, 2002

Presently before the Court are Defendant's Motion to Remand and Plaintiff's Response. For the reasons set forth below, Defendant's motion will be granted.

I. Factual and Procedural Background

Plaintiff, Margaret Shank, is a 57-year-old adult residing at Main Line Nursing and Rehabilitation Center. According to the Complaint, Plaintiff filed concurrent applications for Social Security Disability Insurance benefits (SSDI) and Supplemental Security Income benefits (SSI) on May 28, 1996. Both applications were denied. Plaintiff subsequently exhausted all administrative remedies and filed the instant action asking this Court to reverse the Defendant's decision to deny her benefits, or in the alternative, to remand the case for further hearings.

In response, Defendant filed a Motion to Remand pursuant to sentences six of 42 U.S.C. 405(g) of the Social Security Act. In the motion to remand, the Office of Hearing and Appeals requests that this matter be returned to the Commissioner for the purpose of locating Plaintiff's case file, which the Commissioner represents is lost. If unable to locate the file within a reasonable amount of time, Commissioner maintains that the file will be reconstructed. Defendant argues that good cause for remand exists in the present case, as a lost file is the type of "procedural defect"

anticipated by Congress in determining whether or not a sentence-six remand is appropriate.

II. Discussion

The issue presented before the Court is whether the loss of a claim file constitutes “good cause” for remand within the meaning of sentences six of § 405(g). The Defendant argues that such “procedural defects” were expressly contemplated by Congress in the 1980 amendment to the provision.

A federal district court may remand a final decision of the Commissioner regarding the entitlement of a claimant to social security benefits only as provided in sentences four and six of 42 U.S.C. 405(g). See Melkonyan v. Sullivan, 501 U.S. 89, 100 (1991). While courts normally have inherent power, among other things, to remand cases, both the structure of § 405(g) and the accompanying legislative history show Congress’ clear intent to limit courts to two kinds of remands in these cases. Under sentence four, a district court may remand in conjunction with a judgment affirming, modifying, or reversing the decision of the Secretary. See id. Sentences six of § 405(g), as explained by the Supreme Court in Sullivan v. Finkelstein, 496 U.S. 617, 623-629 (1990), describes an entirely different type of remand.

In a sentence-six remand, the district court does not affirm, modify or reverse the Secretary’s decision; it does not rule in any way as to the correctness of the administrative determination. See Melkonyan v. Sullivan, 501 U.S. 89, 98 (1991). Rather, sentences six of § 405(g) authorize the court to remand a case to the Commissioner for further action. See Melkonyan v. Sullivan, 501 U.S. 89, 100 (1991). Sentences six of § 405(g) provides in full:

The court may, on motion of the Secretary made for good causes shown before he files his answer, remand the case to the Secretary for further action by the Secretary, and it may at any time order additional evidence to be taken before the Secretary, but only upon a showing that there is new evidence which is material and that there is

good cause for the failure to incorporate such evidence into the record in a prior proceeding; and the Secretary shall, after the case is remanded, and after hearings such additional evidence if so ordered, modify or affirm his findings of fact or his decision, or both, and shall file with the court any such additional and modified findings of fact and decision, and a transcript of the additional record and testimony upon which his action in modifying or affirming was based.

Sentence-six remands may be ordered in only two situations: (1) where new, material evidence is adduced that was for good cause not presented before the agency; or (2) where the Commissioner for good causes shown requests a remand before answering the complaint. See Melkonyan v. Sullivan, 89, 99-100 and n.2 (1991); cf. Sullivan v. Finkelstein, 496 U.S. 617, 626 (1990). This reading of the statute is dictated by the plain language of §405(g) and is supported by the legislative history.

In reporting on the Social Security Disability Amendments of 1980, the joint conference committee of Congress explained that in some cases procedural difficulties, such as an inaudible hearing tape or a lost file, necessitate a request for remand by the Commissioner. The committee stated:

Such a situation is an example of what could be considered “good cause” for remand. Where, for example, the tape recording of the claimant’s oral hearing is lost or inaudible, or cannot be otherwise transcribed, or where the claimant’s files cannot be located or are incomplete, good cause would exist to remand the claim to the Secretary for appropriate action to produce a record....

H.R. Rep. No. 96-944, 96th Cong., 2d Sess. 59 (1980).

In the instant matter, Defendant represents that the file is lost. Therefore, I conclude that pursuant to sentence six of 42 U.S.C. 405(g), the Defendant has shown good cause for this matter to be remanded to the Commissioner for further proceedings. Accordingly, Defendant’s motion will be granted. An appropriate order follows.

**INTHEUNITEDSTATESDISTRICTCOURT
FORTHEEASTERNDISTRICTOFPENNSYLVANIA**

MARGARETSHANK,	:	
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Plaintiff,	:	
	:	CIVILACTION
v.	:	
	:	
JOANNEB.BARNHART	:	NO.02-0306
CommissionerofSocialSecurity	:	
Defendant.	:	

ORDER

ANDNOW ,this_____dayofAugust,2002,uponconsiderationofDefendant's
MotiontoRemand, **ITISHEREBYORDERED** thatDefendant'smotionis **GRANTED**,andthis
matteris **REMANDED**pursuanttosentencesixof42U.S.C.405(g),totheCommissionerfor
furtherproceedings.

BYTHECOURT:

CLIFFORDSCOTTGREEN,S.J.